

C. Remarks

The claims are 21-35, with claims 21 and 25 being independent. Claims 36 and 37 have been cancelled without prejudice or disclaimer. Claim 25 has been amended to specifically recite the microorganisms previously listed in claim 37. Claims 21-23, 26, and 28-35 have been amended solely as to form. No new matter has been added.

Reconsideration of the present claims is expressly requested.

Claims 21-37 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to satisfy the written description requirement in connection with *Pseudomonas cichorii* YN2 (FERM BP-7375), *Pseudomonas cichorii* H45 (FERM BP-7374), and *Pseudomonas jessenii* P161 (FERM BP-7376).

Applicants would like to direct the Examiner's attention to the Office record of U.S. Patent No. 7,078,200 B2. Specifically, the IFW of that case contains papers (October 5, 2005 submissions) pertaining to the deposit of the microorganisms now recited in claim 25 and their availability. Accordingly, Applicants respectfully submit that the deposit requirements have been satisfied and the above rejection should be withdrawn.

Claims 21-36 stand rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to satisfy the enablement requirement. Specifically, the Examiner alleged that the specification only disclosed three specific microorganisms and there is no reliable method that can be used to predict which microorganisms, other than those specifically disclosed, have the desired activity to produce the PHA polymers as claimed.

To expedite prosecution, claim 25 has been amended to recite the specific

microorganisms, which the Examiner deemed enabled. Thus, the enablement rejection should be withdrawn.

Claims 21 and 24 stand rejected under the judicially created doctrine of obviousness-type double patenting over claim 15 of U.S. Patent No. 6,911,520 B2, claim 8 of U.S. Patent No. 6,908,721 B2, and claim 2 of U.S. Patent No. 6,645,743 B2. Claims 21 and 24-37 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 1, 2, 8, and 9 of U.S. Patent No. 6,649,380 B2.

Applicants believe that the filing of a terminal disclaimer at this juncture is premature. Applicants, for example, would need to pay a fee for the recordation of each terminal disclaimer, which is non-refundable, should the withdrawal of the disclaimer need to be requested due to additional future amendments or should this application be abandoned in favor of a continuation. In that regard, Applicants will also have additional expenses associated with, for example, re-recording the terminal disclaimers in the continuation or requesting withdrawal of the terminal disclaimers. Furthermore, since the majority of the claims in this case are yet to be examined due to the pending withdrawal of the restriction requirement, the terminal disclaimer is believed to be premature.

Nonetheless, should the Examiner believe that the double patenting rejections are the only issues outstanding in the present case, the Examiner is requested to contact the undersigned to discuss these rejections prior to issuing another action on the merits.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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